

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.622(b))	MM Docket No. 01-244
Table of Allotments,)	RM-10234
Digital Television Broadcast Stations.)	
(Tyler, Texas))	

In the Matter of)	
)	
Amendment of Section 73.622(b))	MM Docket No. 01-245
Table of Allotments,)	RM- 10235
Digital Television Broadcast Stations.)	
(Lufkin, Texas))	

To: The Chief, Video Division, Media Bureau

REPLY OF INTERNATIONAL BROADCASTING NETWORK
TO OPPOSITION OF CIVCO INC.
TO PETITION FOR RECONSIDERATION

Pursuant to Section 1.429(g) of the Commission's Rules, International Broadcasting Network ("IBN") hereby replies to the opposition filed by CivCo, Inc. ("CivCo") in the above-captioned consolidated proceedings.

I.

This reply is timely filed. As CivCo's opposition was served by mail, Section 1.4(h) of the Commission's Rules applies to extend the ten-day deadline for a response by three additional days.

II.

It is not entirely clear to ~~IBN~~ that CivCo's opposition was timely filed. According to the Commission's document lists for both proceedings, CivCo's opposition

was received by the Commission on January 3, 2003. If those lists are correct, the opposition was not timely filed. A copy of the first page of each of the document lists is attached as Exhibit A.

III.

Regrettably, CivCo's opposition is short on substance and long on inflammatory rhetoric. From the second page through the ninth page, the opposition contains numerous statements that serve only to offend. Terms like "outlandish speculations," "cognitive failure," "imaginative,"³ "nonsensical" and "purely fanciful"⁵ contribute nothing to a reasoned discussion of the merits. These and other contemptuous terms used by CivCo merely inflame passions at the expense of logic and civility.

IV.

CivCo has mischaracterized the arguments IBN has offered in these proceedings. It has misstated IBN's positions and then argued against those distorted positions. IBN does not have a "cognitive failure" with regard to the Commission's Rules, and it has not argued that the Commission's Rules allow low power television stations to cause interference to full power stations.⁶ That is not an issue in these proceedings. The fundamental issue is whether the substitution of channels is in the public interest. IBN has expressly acknowledged that the Commission has broad discretion to lawfully grant or deny the substitution of channels.⁷ IBN believes, however, that the Commission is required to act in the public interest and that it has failed to do so in these proceedings. IBN continues to believe that the petitions of thousands of viewers residing within the service areas of KLTV and KTRE, along with the unanimous support of IBN by all third parties who filed comments in these proceedings, is the best evidence of the public interest.

¹ Opposition at 5

² *Id.* At 6.

³ *Id.* At 8.

⁴ *Id.* At 9.

⁵ *Id.* At 9.

⁶ *Id.* At 3.

V.

CivCo has sought to discredit the petitions by referring to them as having been “manufactured” and claiming that **IBN** “misled the signatories.”⁹ Both assertions are untrue, and CivCo knows them to be untrue. IBN’s role in obtaining the signatures was quite limited because of the illness and death of a beloved family member of IBN’s president.” IBN’s headquarters office was closed for a period of several days, and petitions were not made available to the public until sometime after the day of the funeral.¹¹ During that period of grief, the owners of KLTV and KTRE waged a campaign of misinformation through the press.” It is inaccurate and disingenuous for CivCo to claim that IBN misled the public. That claim is simply not true. Likewise, CivCo’s astonishing claim that the petitions were “manufactured” and of “questionable provenance”¹⁴ is absolutely false.

VI.

CivCo asserts that IBN’s reliance on the Fifth Amendment, which prohibits takings of property without due process and just compensation, is without merit.” CivCo argues that “licensees have no property interest in their licenses beyond the terms of the licenses themselves.”¹⁶ The licenses of IBN’s stations, like those of KLTV and KTRE, have terms that expire August 1, 2006. Whatever merit the concept that licensees have no property interest may have had in the past, it flies in the face of reality today. Broadcasters buy and sell their licenses and treat their value as assets. The Commission now auctions off licenses to the highest bidders. Certainly, there is a growing body of case law that prohibits regulatory takings. It may be time for this issue to be revisited by the courts.

⁹Petition at 5-6.

⁸ Opposition at 7.

⁹ *Id.* at 7, footnote 21.

¹⁰ The death occurred October 23, 2001

¹¹ The funeral was October 25, 2001.

¹² *Lufkin Daily News*, page 1, October 26, 2001; *Longview News-Journal*, page 1B, October 31, 2001; Civic’s Comments, Exhibit C.

¹³ Opposition at 7.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 6.

VII.

While asserting that the Equal Protection Clause of the Constitution affords **IBN** no protection,” CivCo relies on that same Clause to support its contention that the Commission could not have denied its requested channel substitutions.¹⁸ The argument that CivCo is entitled to the channel substitutions because other broadcasters have been granted channel substitutions ignores the fact that the circumstances are quite different. Unlike other channel substitutions, CivCo’s proposals encountered strong opposition from the third parties who filed comments and from the thousands of individuals who signed petitions. Unlike others who may have offered genuine reasons in support of their requests, CivCo has offered only fallacious boilerplate claims lacking any evidentiary support whatsoever. CivCo’s towers are very strong and very lightly loaded, and there is no reason that a UHF antenna could not easily be mounted on each of them. Likewise, CivCo’s claim that the substitutions will enable it to build its digital facilities more quickly is false. In fact, the contrary is true. CivCo’s stations requested and were granted authority to build UHF facilities long ago, and there is no legitimate reason that those digital facilities could not have been built on the specified UHF channels prior to the original deadline. CivCo, like its corporate twin LibCo, has needlessly procrastinated. It has used channel substitutions as an excuse for delay. CivCo’s quest for channel substitutions is unlike that of any other broadcaster, and it cannot reasonably claim that the **Equal** Protection Clause denies the Commission the authority to deny the channel substitutions it has sought. The facts are different, and the outcome should also be different.

VIII.

CivCo attempts to brush aside genuine issues of ownership by claiming that a “simple review of publicly available FCC ownership reports fully answers all of **IBNs** contentions.”¹⁹ That is not the case, however. It is undisputed that The Liberty Corporation, of Greenville, South Carolina, is the actual owner and operator of KLTV and KTRE. It is likewise undisputed that CivCo, of Las Vegas, Nevada, is the current licensee of those stations. Moreover, it is undisputed that CivCo and its corporate sibling

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 5.

¹⁹ *Id.* at 9.

LibCo are owned by Civic License Holding Company, Inc. (“Civic”), “which is a wholly-owned subsidiary of TV-3, Inc., which is a wholly-owned subsidiary of Civic Communications Corporation 11, which is a wholly-owned subsidiary of Cosmos Broadcasting Corporation, which is a wholly-owned subsidiary of The Liberty Corporation.”²⁰ Thus, there are at least seven different entities on at least six different levels. One may reasonably question why so many corporate fronts are **used** and why the officers of those corporations play musical chairs. James M. Keelor, for example, **has** claimed at various times to be president of Civic, Cosmos Broadcasting Corporation and The Liberty Corporation. Whatever the case may be with respect to those corporations and their changing cast of officers, the more important issue is when The Liberty Corporation acquired ownership and control of KLTN and KTRE. Based on information given to IBN by knowledgeable company insiders, it is clear that Civic had effectively and unlawfully relinquished control to The Liberty Corporation or its subsidiary Cosmos Broadcasting Corporation prior to May 1, 2000, the date on which the petitions for channel substitutions were filed with the Commission, and months before anyone had sought or obtained the necessary approval for transfer of control or assignment of licenses. That was an extremely serious violation of the Commission’s Rules, and it was a sham that has tainted everything that has been filed in these proceedings by Civic or CivCo.

IX.

CivCo glosses over its failure to lawfully serve IBN in accordance with the Commission’s Rules by stating that the “rules did not expressly require service” and, in any event, copies of relevant documents were provided to IBN “well in advance of the date for the submission of any comments in these **proceedings**.”²² It also claims that IBN was not prejudiced by its failure to serve notice.²³ CivCo is wrong. Section 1.401(d) of the Commission’s Rules expressly requires service “on any Commission licensee or permittee whose channel assignment would be changed by grant of the petition.” There is no ambiguity in the Rule. IBN was lawfully entitled to contemporaneous notice. At

²⁰ Civic’s Reply Comments at 6.

²¹ Opposition at 8, footnote 25.

²² *Id.* at 8.

²³ *Id.* at 8, footnote 26.

the time the petitions for channel substitutions were filed and for a lengthy period of time thereafter, IBN's stations were eligible for Class A status and would have had the means of quickly defeating the proposals. While seeking IBN's patience and forbearance and hinting that its efforts to take IBN's channels would be withdrawn, Civic surreptitiously made additional filings with the Commission without serving IBN. On October 30, 2001, after reading false statements of Cosmos Broadcasting Corporation's president James M. Keelor in *The Lufkin Daily News*,²⁴ IBN suspected that Civic had made filings without IBN's knowledge and demanded that copies be immediately sent to IBN.²⁵ Although Civic's counsel complied with that demand, it was much too late for IBN to effectively negate the harm those filings had caused. In reliance on those unserved filings, the Commission had already issued its Notice of Proposed Rule Making. Moreover, the deadline for comments was only days away. The prejudice to ~~IBN~~ was clear and substantial.

X.

CivCo refers to its "overtures of **cooperation**"²⁶ and states that it provided "suitable displacement applications."²⁷ In fact, neither CivCo nor any of its affiliated companies made legitimate offers of cooperation, and the displacement applications were unsuitable. No genuine overture of cooperation was made. Any appearances of cooperation were subterfuges to deceive ~~IBN~~ and lull it into complacency while Civic worked behind the scenes to persuade the Commission to approve the substitution of channels.

XI.

CivCo alleges that "Practical relief is available to IBN by moving to other channels."²⁸ That is a contention that IBN doesn't concede. However, even if other suitable channels were available, it would be necessary for IBN to completely rebuild the licensed facilities of its stations at new sites at tremendous cost. The enormous cost of rebuilding and the greatly increased operational costs that would necessarily follow would be a harsh and unsustainable burden for ~~IBN~~, which is a publicly-supported

²⁴ *Lufkin Daily News*, page 1, October 26, 2001

²⁵ IBN's Reply Comments, Exhibit B, e-mail of October 31, 2001, to James M. Keelor

²⁶ Opposition at 4.

²⁷ *Id.* at 4.

nonprofit organization dependent on contributions. Moreover, it is IBN's considered view that moving to other channels would greatly increase the risk of its stations being displaced in the future.

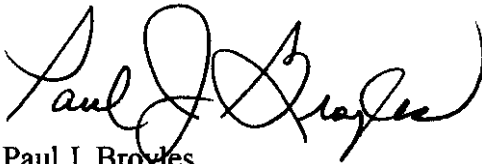
XII.

For all of the foregoing reasons, and for all of the reasons set forth in **IBN's** previous filings, IBN respectfully reiterates its request that the Report and Order be reconsidered and that the substitution of channels be rescinded or otherwise nullified.

Respectfully submitted,

INTERNATIONAL BROADCASTING NETWORK

By its President

A handwritten signature in black ink, appearing to read "Paul J. Broyles", written in a cursive style.

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January 14,2003

²⁸ *Id.* at 2.

FC Federal Communications Commission**21 Record(s) Found For Proceeding:01-244**

Record 1 through 21 displayed

Proceeding: 01-244 Type Code: OP Date Received/Adopted: 01/03/03 Document Type: OPPOSE DA/FCC Number: File Number/Community: Filed on Behalf of: Civco, Inc. Filed By: Dow Lohnes & Alberson Attorney/Author Name: John S. Logan Complete Mailing Address: 1200 New Hampshire Avenue, N.W. Washington, DC 20036 View	Date Released/Dealt: Total Pages: 11 Document Date:
Proceeding: 01-244 Type Code: PN Date Received/Adopted: 12/16/02 Document Type: PUB NOTICE DA/FCC Number: File Number/Community: Filed on Behalf of: R.I.C. Filed By: FCC Attorney/Author Name: Wanda Pullman Complete Mailing Address: 445 12th Street, S.W. Washington, DC 20554 View	Date Released/Dealt: Total Pages: 1 Document Date:
Proceeding: 01-244 Type Code: OP Date Received/Adopted: 11/27/02 Document Type: OPPOSE DA/FCC Number: File Number/Community: Filed on Behalf of: Civco, Inc. Filed By: Dow Lohnes & Alberson, PLLC Attorney/Author Name: John S. Logan Complete Mailing Address: 1200 New Hampshire Avenue, N.W. Washington, DC 20036 View	Date Released/Dealt: Total Pages: 4 Document Date: 11/27/02
Proceeding: 01-244 Type Code: RQ Date Received/Adopted: 11/22/02 Document Type: REQUEST DA/FCC Number: File Number/Community: Filed on Behalf of: International Broadcasting Network Filed By: Attorney/Author Name: Paul J. Broyles Complete Mailing Address: 5206 FM 1960 West Suite 105 Post Office Box 691111 Houston, TX 77269-1111 View	Date Released/Dealt: Total Pages: 3 Document Date: 11/21/02

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Record 1 through 24 displayed

Proceeding: 01-245 Type Code: OP Date Received/Adopted: 01/03/03 Document Type: OPPOSE DA/FCC Number: File Number/Community: Filed on Behalf of: Civco, Inc. Filed By: Dow Lohnes & Alberson Attorney/Author Name: John S. Logan Complete Mailing Address: 1200 New Hampshire Avenue, N.W. Washington, DC 20036 View	Date Released/Dealt: Total Pages: 1 Document Date: 01/02/03
Proceeding: 01-245 Type Code: PN Date Received/Adopted: 12/16/02 Document Type: PUB NOTICE DA/FCC Number: File Number/Community: Filed on Behalf of: R.I.C. Filed By: FCC Attorney/Author Name: Wanda Pullman Complete Mailing Address: 445 12th Street, S.W. Washington, DC 20554 View	Date Released/Dealt: Total Pages: 1 Document Date:
Proceeding: 01-245 Type Code: OP Date Received/Adopted: 11/27/02 Document Type: OPPOSE DA/FCC Number: File Number/Community: Filed on Behalf of: Civco, Inc. Filed By: Dow Lohnes & Alberson, PLLC Attorney/Author Name: John S. Logan Complete Mailing Address: 1200 New Hampshire Avenue, N.W. Washington, DC 20036 View	Date Released/Dealt: Total Pages: 4 Document Date: 11/27/02
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CERTIFICATE OF SERVICE

I, Paul J. Broyles, hereby certify that on this **14th** day of **January** 2003 a copy of the foregoing **REPLY OF INTERNATIONAL BROADCASTING NETWORK TO OPPOSITION OF CIVCO, INC. TO PETITION FOR RECONSIDERATION** **has** been served by first-class mail, postage prepaid, upon the following:

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